

Ameren Services

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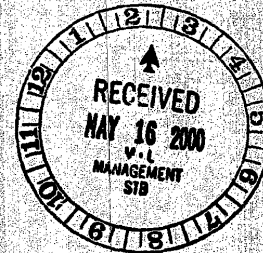
MAY 16 2000

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May 16, 2000

**VIA HAND DELIVERY**

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
Attn: STB Ex Parte No. 582  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



RE: *Major Rail Consolidation Procedures*  
STB Ex Parte No. 582 (Sub-No. 1)

Dear Secretary Williams:

Enclosed herewith are an original and 26 copies of the Written Statement of Ameren Services Company for submission in the above-captioned proceeding. A 3.5-inch diskette containing a copy of this letter and Ameren's statement in Word7.0 is also enclosed.

Copies of the enclosed written statement are being served on all parties set forth in the Board's service list by first class mail.

Please acknowledge receipt and filing of the enclosed statement by file-stamping the enclosed twenty-sixth copy of the statement and returning that copy to me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert K. Neff".

Robert K. Neff  
Transportation Director  
Ameren Services Company

Enclosures

cc: Steven Sullivan

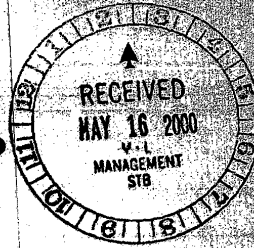
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BEFORE THE  
**SURFACE TRANSPORTATION BOARD**



**STB Ex Parte No. 582 (Sub-No. 1)**

**MAJOR RAIL CONSOLIDATION PROCEDURES**

**COMMENTS OF**  
**AMEREN SERVICES COMPANY**

**Robert K. Neff**  
**Transportation Director**  
**Ameren Services Company**  
**1901 Chouteau Ave.**  
**St. Louis, MO. 63103**

**May 16, 2000**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 582 (Sub-No. 1)**

**MAJOR RAIL CONSOLIDATION PROCEDURES**

**COMMENTS OF AMEREN SERVICES COMPANY**

**Summary of Comments**

Ameren Services Company encourages the Surface Transportation Board not to merely maintain, but to enhance, competition among rail carriers during future rail merger proceedings. Ameren believes that history has shown that prior STB efforts to preserve competition have been undermined by the merging carriers after a merger is completed, resulting in a lessening of competition. Ameren also believes that history has shown that more than two (2) carriers are needed in order to achieve effective competition. As Ameren stated in its written statement submitted in STB Ex Parte 582, Public Views on Major Rail Consolidations, which is hereby incorporated by reference and attached hereto, one of the competitive enhancements that should be considered in mergers is preservation of competition at locations which are "2 to 1" by contract exception, that is, on routes where proportional rates currently allow competition on a portion of a movement before reaching a bottleneck carrier. Ameren submits that, in some circumstances, however, the contract exception may not suffice and that trackage rights may be required to preserve competition.

**Background of Ameren Corporation**

Ameren Corporation ("Ameren") is a Public Utility Holding Company which includes the utilities formerly known as Central Illinois Public Service Company (d/b/a AmerenCIPS), Union Electric Company (d/b/a AmerenUE), and the unregulated generating company, Ameren Energy Generating Company. Ameren purchases approximately 30 million tons of coal annually. Approximately 29 million tons of this coal moves by rail, with the remainder moving by barge and truck. Rail transportation costs are a large part of Ameren's operating costs, totaling approximately \$300 million per year. Ameren maintains a fleet of roughly 5,000 railcars for its use, and at any given time, there are approximately 35 unit trains in service to Ameren facilities.

Major rail carriers serving Ameren coal-fired plants include Burlington Northern Santa Fe ("BNSF"), Canadian National/ Illinois Central ("CNIC" or "CN"), Norfolk Southern ("NS") and Union Pacific ("UP"). Ameren also controls two shortline railroads, the Joppa and Eastern Railroad, and the Missouri Central Railroad Company.

### **Issues to be Addressed in Ameren's Comments**

In its Advance Notice of Proposed Rulemaking ("ANPR") of March 31, 2000, the Surface Transportation Board ("STB" or "Board") requested that rail shippers and other interested parties comment on the following issues:

1. Downstream effects
2. Maintaining Safe Operations
3. Safeguarding Rail Service
4. Promoting and Enhancing Competition
5. Shortline and Regional Railroad Issues
6. Employee Issues
7. "3 to 2" Issues
8. Merger-related Public Interest Benefits
9. Cross-Border Issues

Ameren's comments will focus on issue 4-Promoting and Enhancing Competition and issue 7-"3-to-2" Issues.

### **Comments on Promoting and Enhancing Competition**

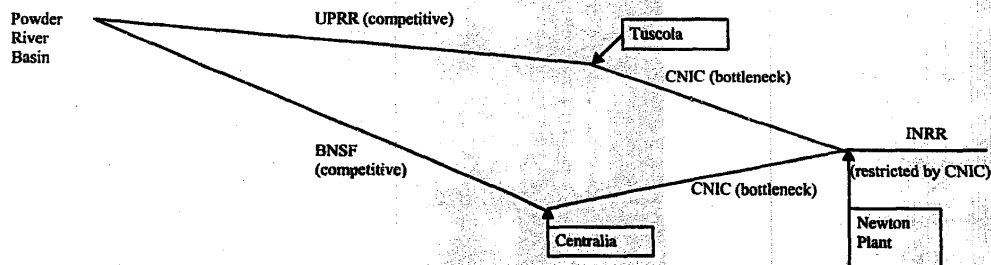
Ameren endorses the STB conclusion that "the time has come to consider whether we should alter our rail merger policy to place a greater emphasis on enhancing, rather than simply preserving, competition." *STB ANPR Ex Parte 582*. History has shown that attempts at merely preserving competition have actually resulted in a reduction in competition. For example, efforts to maintain existing competition at "2 to 1" locations in the UP/SP merger often resulted in less competition when the merger was finally implemented, such as at Ameren's Labadie plant. Ameren has found that there exists a tendency among merging railroads to promise competitive solutions during the merger process, but then resist keeping those promises after the merger is completed. This has resulted in many shippers seeking further relief at the STB. With the lessening of alternative rail competition through mergers, the STB should seek to increase competition not at only "2 to 1" locations, but also at locations that enjoy competition through proportional rates on part of the joint line movement. A merger should not result in a diminishing of competition on any portion of a shipper's route of movement.

A good illustration of this diminishing of competition along a portion of a route is the case of Ameren's Newton plant in the event of the BNSF/CNIC merger. Newton currently enjoys origin competition from the Powder River Basin ("PRB") rail carriers, Union Pacific ("UP") and Burlington Northern Santa Fe Railway ("BNSF"). This coal is currently interchanged with the Canadian National (over the former Illinois Central rail line hereinafter collectively "CNIC") at Tuscola and Centralia respectively for delivery to Newton. CNIC therefore has a destination monopoly or "bottleneck" over the final portion of either move to the Newton plant. The Newton Plant is unique in that rather than CNIC establishing a through route from origin to destination, CNIC has established separate rates for the bottleneck portion. As a



result, Newton has been able to establish individual proportional rate contracts with UP, BNSF, and CNIC to cover their respective portion of the move and Newton has thereby benefited from origin competition between UP and BNSF.

The Newton Plant also has access from the Indiana Rail Road Company ("INRR") via a "bottleneck" over IC. The final part of any INRR move must travel over IC trackage rights to the Newton Plant. Although the INRR could physically move PRB coal from either UP or BNSF via a multi-carrier move, the IC trackage rights contain a restriction against INRR moving any western coal over the IC trackage rights to Newton. As a result, INRR cannot now compete for PRB coal movements to Newton. Newton's situation is shown diagrammatically as follows:



#### **Shippers with Diminished Competition Should Receive Protection in Merger Cases**

The Surface Transportation Board ("STB") and its predecessor, the Interstate Commerce Commission ("ICC"), have a long-standing, strong public policy of protecting "2-to-1" shippers. That is, in instances where a shipper enjoyed competitive rail carrier service from two rail carriers that are proposing to merge, the STB has imposed conditions upon the merger to protect the "2-to-1" shipper. The "2-to-1" protective conditions generally granted access via another carrier to the shipper to replace the existing competitive rail carrier service which would be lost as a result of an unconditioned merger (these protections were applied in the UP/SP, BN/Santa Fe, UP/MKT and UP/MP/WP merger proceedings).

Again, using Newton as an example, the plant is not a traditional "2-to-1" shipper as defined in prior merger proceedings. However, Newton's competitive situation is analogous to a "2-to-1" situation. This is true because, as shown in the diagram above, Newton currently enjoys the competitive benefit of BNSF and UP bidding against each other for PRB coal with a pre-determined and equal price for the CNIC bottleneck portion. In addition, in light of recent protections granted to shippers, including the "contract exception" to the bottleneck case, Newton should be afforded competitive protection in the event the BNSF/CNIC control transaction is approved.

Newton is affected by the contemplated merger of BNSF and CNIC because the approved transaction would create a vertical integration of the bottleneck carrier, CNIC, with one of the origin carriers, BNSF. The ICC/STB has generally held that the vertical integration of one of the origin carriers with the bottleneck carrier does not create nor increase the market power faced by

the utility. Nevertheless, the reasoning behind the ICC/STB's prior rulings supports Newton's competitive harm argument because Newton's facts are distinguishable from the facts of past cases.

The ICC historically found that the destination "bottleneck" carrier usually captures the benefit of the origin competition. The ICC/STB believed the bottleneck carrier would set a through rate at the highest possible level and then keep all the monopoly profits by playing the competing origin carriers against one another. This theory is referred to as the "one-lump" theory, i.e. there is only one-lump of monopoly profits to be gained and the destination carrier will take all of it. Thus, the utility shipper is precluded from the benefit of the origin competition.

Nonetheless, the ICC/STB has stated that it has not "altogether rejected the possibility that the benefits of origin competition might flow through to a utility, but we have presumed that they will not." *BN/SF Finance Docket 32549, slip op. at 71*. The rebuttal of the presumption requires that:

the record must clearly show the following in order for a nonmerging carrier to qualify for a grant of trackage rights to a utility over the line of the destination monopoly carrier. First, it must show that, prior to the merger, the benefits of origin competition flowed through to the utility and were not captured by the destination monopoly carrier. Second, if it is established that the benefits of origin competition are in fact passed on to the utility, there must be an additional showing that such a competitive flow-through will be significantly curtailed by the merger.

*BN/SF, slip op. at 71, citing UP/MKT, 4 I.C.C.2d at 476.*

Significantly, the circumstances of the shippers that were used cited by the ICC as a basis for denying relief in the past under this "one lump" theory were shippers that received through routes and rates from the destination carrier.<sup>1</sup> In the case of Newton, however, Ameren negotiated proportional rates with both the competition (BNSF and UP) and the bottleneck (IC) carriers. Ameren has enjoyed and received the benefits of competition between BNSF and UP. Accordingly, in these circumstances, trackage rights may be warranted in order to just preserve competition.

### **"Three-to-Two" Issues**

Ameren urges the Board to scrutinize "3-to-2" issues carefully in merger proceedings. In view of its limited knowledge of and experience with commodities such as automobiles,

<sup>1</sup> In *UP/MP/WP* it was the BN that was arguing for protection from the vertical integration of UP and MP. In denying BN's requested relief for trackage rights, the ICC noted that BN failed to provide evidence relating to the affected shippers' ratemaking and service available at the affected plants. *UP/MP/WP, 366 I.C.C. at 543.*

chemicals or grains, Ameren submits its comments based on its experience with coal procurement and coal transportation.

Prior to the amendments to the Clean Air Act, however, Ameren, like most utilities east of the Mississippi, used Illinois, Indiana and other Eastern-based coal sources. During this period, there was robust competition among numerous coal suppliers as well as competition among three (3) rail carriers – the IC, BN and UP – and competition from barge transportation.

With the full implementation of the Clean Air Act, however, Ameren, again like other utilities, switched to PRB coal. With PRB coal, Ameren knows that there is intense competition among coal suppliers. With respect to the transportation, however, Ameren is limited to two (2) carriers – BNSF and UP. Ameren believes it is in the national interest to enhance competition in transportation from the PRB. Added rail competition from the PRB will produce incentives for the railroads to (1) improve service and (2) lower prices. With the addition of a third carrier from the PRB, there will be more effective competition. Ameren has found that with three or more means of coal transportation, there is always one carrier who will offer competitive service and competitive rates in order to increase market share. Ameren submits that it is necessary for the board to give serious consideration to the “3-to-2” issue, particularly when it concerns the addition of a third carrier to the PRB.

### **Conclusion**

Ameren’s first point is that railroad merger rules should be modified to require competition to be enhanced, not just maintained, in situations where a shipper is losing competitive alternatives.

Ameren’s second point is that competition should be preserved at locations which are “2 to 1” by virtue of competition being present on a portion of a movement with a proportional rate on the bottleneck portion, as well as physical “2 to 1” locations.

Ameren’s third point is the need to enhance third carrier competition from the PRB.

Ameren encourages the STB to aggressively pursue enhanced rail competition via the current rulemaking and in actual merger cases.



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 582**

***PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS***

**WRITTEN STATEMENT OF  
AMEREN SERVICES COMPANY**

**Background of Ameren Corporation**

Chairwoman Morgan, Vice Chairman Burkes, Commissioner Clyburn, I am Robert Neff, the Transportation Director for Ameren Services Company. Ameren Corporation ("Ameren") is a Public Utility Holding Company which includes the utilities formerly known as Central Illinois Public Service Company (d/b/a AmerenCIPS) and Union Electric Company (d/b/a AmerenUE). Ameren purchases approximately 30 million tons of coal annually. Approximately 29 million tons of this coal moves by rail, with the remainder moving by barge and truck. Rail transportation costs are a large part of Ameren's operating costs, totaling approximately \$300 million per year. Ameren maintains a fleet of 5,000 railcars for its use, and at any given time, there are approximately 35 unit trains in service to Ameren facilities.

Major rail carriers serving Ameren coal-fired plants include Burlington Northern Santa Fe ("BNSF"), Canadian National/ Illinois Central ("CNIC" or "CN"), Norfolk Southern ("NS") and Union Pacific ("UP"). Ameren also controls two shortline railroads, the Joppa and Eastern Railroad, and the Missouri Central Railroad Company. I am also the President of Missouri Central Railroad Company. However, my comments on major rail consolidations will reflect Ameren's views as a rail shipper, not as an owner of shortline railroads.

**Issues to be Addressed in Ameren's Written Comments**

In its January 24<sup>th</sup> decision, the Surface Transportation Board ("STB" or "Board") requested that rail shippers and other interested parties comment on the following issues:

1. The timing of any proposed large railroad consolidation given service difficulties and disruptions associated with the last round of railroad mergers.
2. Possible strategic responses engendered by another large railroad consolidation, which might lead to additional consolidation, possibly other changes in the structure of the rail industry, or the way in which the industry is regulated.
3. Views on fundamental questions of the effect of railroad consolidations on the financial condition of the railroad industry and the industry's ability to provide responsive service at reasonable prices.

Ameren's comments will focus on issues 1 and 2. Ameren wishes to thank the Board for holding the multi-day hearing and for the opportunity to express our views on the major railroad consolidations and the present and future structure of the North American railroad industry. We



understand that this hearing is separate and apart from the "BNSF/CN" proposed proceeding and, in fact, we have not formed an opinion on the BNSF/CN proposed transaction at this date. As the Board has noted, BNSF and CN have not filed their application yet and we will hold our decision until we have reviewed that filing. However, Ameren does have serious concerns about the current and future state of the railroad industry and we believe those concerns must be addressed in the face of any future consolidation.

#### **Timing of Further Railroad Consolidations**

As shown in the following table, the number of United States Class I railroads has steadily declined over the past 30 years:

<u>Year</u>	<u>Number of Class I Railroads</u>
1970-	73 Class I railroads
1980-	41 Class I railroads (14 eliminated in 1978 by redefinition of Class I)
1990-	13 Class I railroads
2000-	6 Class I railroads
2010-	? Class I railroads

As the number of Class I Railroads diminishes, shippers in general, and Ameren in particular, are apprehensive about two aspects of large national rail systems: service disruptions and increased market power. In the last five years alone, rail shippers have been faced with major rail consolidations which fell far short of the railroad's predicted benefits to the public. The UP/SP merger and the Conrail transaction have failed to even come close to the promised benefits that shippers were supposed to receive in exchange for a reduction in competition. Instead of benefits, the consolidation in the rail industry has led to major service disruptions and an increase in market power for the railroads.

Because of the extensive mergers that have already taken place, Class I railroad consolidations are now large and complex. Any service disruptions resulting from the integration of the merged roads affect large portions of the national rail system. Recent mergers certainly have affected Ameren. For example, the UP/SP service meltdown proved very costly to Ameren in terms of service to its largest coal fired plant at Labadie, MO. Ameren was forced to truck coal from a nearby BN served plant, redispach Labadie's load to other plants to conserve fuel, and acquire additional trainsets as cycle times to western mines increased. A one day increase in cycle times to western mines requires Ameren to place three additional trainsets (345 cars) in service to maintain the same deliveries. The effects of merger-related slowdowns on both western carriers are still being felt today as many unit trains purchased or leased at great expense to mitigate the effects of poor service are being stored nationwide as cycle times have begun to return to their pre-merger levels.

The other concern of shippers, increased market power, is a matter of great importance as railroads merge into larger and larger systems which will ultimately lead to just two national systems. Ameren has plants that are captive to a single railroad and plants that have direct competition among carriers. Ameren finds that rates are about 30% higher on a ton-mile basis to plants that are captive. As a shipper who has no practical alternative to rail for the movement of coal from Wyoming to certain Ameren plants in the Midwest, competition among carriers is the

only effective method to achieve better rates and service. Mergers tend to decrease choices by allowing railroads to control more origins and destinations.

Just as troubling as the chilling effect of mergers on competition is the ~~is~~ gaining that occurs among competing carriers during the merger process. Mergers give competing carriers opportunities to carve up markets to mutual advantage. Despite railroad rhetoric during merger hearings about preserving competition, merger settlements often result in quite the opposite. Past history suggests that under a two carrier system, the two railroads would work together to divide up their respective markets.

For example, Ameren recently learned that, according to UP, UP and BNSF got together and decided to treat Ameren's Labadie plant differently than every other 2-to-1 shipper during the UP/SP merger, which resulted in the lessening of competition at the plant. If UP's assertion is true, then this is an indication that without protections for shippers, the railroads will collectively determine which shippers they will each serve in order to reap their respective biggest monopoly profits from each shipper.

Another example indicating the potential harm under a two carrier system is the carving up of Conrail by NS and CSX. These two carriers were permitted to determine which shippers would be served by each carrier, which shippers would get single line service and which ones would get joint line service after the merger. Once again numerous public benefits were predicted but none have been realized by the shippers. After mergers are approved, carriers quickly develop Class I amnesia regarding competitive promises made during the merger approval process, leaving shippers without their intended benefits.

#### **Strategic Responses by Other Railroads**

From a shipper viewpoint, it seems as if it is almost too late in the railroad merger movement to discuss the downstream effects of a BNSF/CN merger. Such a discussion may have been better undertaken in 1980 or 1990, when there was still a chance to retain some type of regional competition.

The question now is how do the few remaining railroads combine to create two national systems. There is little doubt that the BNSF/CN merger will bring about further mergers among the other Class I roads. The other Class I railroad have themselves proclaimed that more mergers will occur in response to the BN/CN merger. As a result, we are left with looking at what strategic responses will be made. The rational choices for a combination of the United States and Canadian roads to form two transcontinental railroads would be few:

BNSF+CN+KCS+NS vs UP+CP+CSX

Or

BNSF+CN+KCS+CSX vs UP+CP+NS

Irrational choices for national systems in the east and west are fewer:

BNSF+CN+KCS+UP vs CSX+NS+CP

The first relevant question is: should the STB devise a plan for this last railroad consolidation movement, or should free market principles apply? Prior attempts at controlling the direction of railroad mergers were not successful. Beginning with the Transportation Act of 1920 (the Ripley Plan) and ending with the Transportation Act of 1933 (the Prince Plan) this so-called Planned Merger Period produced only two mergers of any significance from 1920 until 1940. Railroads, regulators and investors all did not agree with the Interstate Commerce Commission's ("ICC") apportionment of their investment. A lack of ICC authority to compel consolidations prevented any of the plans from working. Such an attempt at controlled mergers may be easier now with the fewer number of railroads involved, but the STB cannot compel the railroads to merge in a logical manner.

The second relevant question is: should the STB establish the timing of the BNSF/CN merger based on the state of the rest of the industry, or should the merger participants be allowed to consolidate based on the participants' assessment of their readiness? Here the STB can use its discretion to deny a merger application until the STB, in its judgment, assesses that the industry is ready for additional mergers. There is some precedent for this argument, considering that the Great Northern/Northern Pacific/Chicago Burlington & Quincy merger was attempted three times over 74 years before being approved as the Burlington Northern in 1967.

**Greater Protection is Needed for Shippers**

As railroads become larger and more powerful through mergers, shippers who must develop competitive alternatives increasingly find doing so more difficult. The only shippers who received competitive access in prior mergers were the 2-to-1 shippers, who had direct competition between the merging carriers and subsequently were reduced to one carrier after the merger. Under the Board's past precedent, however, shippers going from 3-to-2 or 4-to-3 competitive options, as a result of a rail merger or consolidation, do not receive any competitive protections. As a result, the Board's precedent appears to indicate that shippers would not be harmed if the rail industry consolidated to just two railroads.

In the face of continuing consolidations, shippers will lose even the few protections already in place without adequate provisions imposed by the STB. For example, the recently upheld bottleneck contract exception would lose any practical benefit to shippers as the number of carriers shrink. See *Union Pacific Railroad Co. v. Surface Transportation Board, et al.*, No. 98-1058, U.S. Court of Appeals for the District of Columbia, decided Feb. 15, 2000. Under the contract exception, a shipper can benefit from competition, even where served by a bottleneck carrier, if the shipper has contract rates for the non-bottleneck portion. As the number of railroads shrink, we believe the incentive for railroads to give a contract rate for the non-bottleneck portion will diminish.

Moreover, this protection will be lost if the Board does not provide affirmative protection to shippers who currently have this benefit but would lose it in the face of a subsequent merger. A shipper that currently has two non-bottleneck carriers at the origin and contract rates for the non-bottleneck portions, has the benefit under the contract exception, of getting a rate for the



bottleneck portion of the route. This means the shipper has two equally competitive options. However, the contract exception does not require a carrier that has a single-line route to interchange with another carrier. Therefore, if the bottleneck carrier is permitted to merge with one of the non-bottleneck carriers, the shipper has experienced a diminution in competition. The merger-created single-line route will not be required to publish a bottleneck portion rate and thus the shipper will go from two competitive options to effectively one without a competitive protection. Ameren's Newton plant, currently served by the CNIC but with origin competition between UP and BNSF, is one such example of how this loss of competition could occur under the BN/CN merger.

#### **Industry Structure Must Change**

As I have adverted to above, the STB should give itself adequate time to assess the status of the rail industry today. I invite the Board to continue these hearings or create a new proceeding to investigate how other industries have been deregulated and have become more competitive. The airline, motor carrier, telecommunications, electric utility and gas industries have been or are in the process of being deregulated. The Board should review the policies employed in these other industries regarding divestment and shared access which has preserved and even enhanced competition. While the STB may be the successor to the oldest regulatory agency, the STB is no longer the lone pioneer in the era of deregulation. The Federal Communications Commission ("FCC"), the Federal Aviation Administration ("FAA", formally under CAB) and Federal Energy Regulatory Commission ("FERC") have all had substantial roles in deregulating the various industries subject to their jurisdiction. In fact, some of the very economists testifying in this proceeding have testified in other industry restructuring. The Board should ask all of them about their experience in the other industries.

I firmly believe that the STB and the railroads should take the opportunity to take advantage of the knowledge that has been gained in other industries, rather than view the rail industry in a vacuum. This can only result in achieving the best solution for the most economically-efficient way to preserve and promote competition in the rail industry. The answer certainly is not just in allowing the creation of only two national railroads.

#### **Conclusion**

The most recent railroad mergers have shown that the decreasing number of railroads have worked out settlement agreements, joint deals, and joint purchases in each other's transactions, all in the name of helping shippers. However, shippers have yet to realize little, if any, of the benefits promised from those mergers. Therefore, the structure of the rail industry must change and/or additional competitive protections must be put in place before any further consolidation in the rail industry should be permitted.



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